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President's Advisory Board Validates Republican Approach

**Kyl-Domenici-Murkowski Amendment Improves
Security and Accountability at U.S. Nuclear Labs**

A panel appointed by the President, the President's Foreign Intelligence Advisory Board (PFIAB), issued a report on security problems at the U.S. Department of Energy (DOE) on June 17, 1999, validating Republican arguments that "the Department of Energy is incapable of reforming itself — bureaucratically and culturally — in a lasting way, even under an activist Secretary" ["Science At Its Best, Security At Its Worst: A Report on Security Problems at the U.S. Department of Energy," President's Foreign Intelligence Advisory Board, June 1999, p. III].

The Rudman Report, as it's also referred to (the PFIAB's chairman is the former Senator Warren B. Rudman), outlined the need to reorganize the DOE, "to resolve the many specific problems with security and counterintelligence in the weapons laboratories, but also to address the lack of accountability that has become endemic throughout the entire Department," and it recommended "deep and lasting structural change that will give the weapons laboratories the accountability, clear lines of authority, and priority they deserve" [p. 41].

Here are some other excerpts from the report: "Accountability at DOE has been spread so thinly and erratically that it is now almost impossible to find," and, "Convoluting, confusing, and often contradictory reporting channels make the relationship between DOE headquarters and the labs, in particular, tense, internecine, and chaotic. . . . Even with the latest DOE restructuring, the weapons labs are reporting to far too many DOE masters" [p. 4].

On June 22, 1999, former Senator Rudman testified before a joint hearing of the Senate Armed Services, Intelligence, Energy and Natural Resources, and Governmental Affairs Committees on the PFIAB's findings, and said:

"Because of the overwhelming weight of damning evidence of security failures and the profound responsibility that comes with the stewardship of nuclear weapons technology, it's time to fundamentally restructure in some way the lines of authority so that the weapons labs and their security are in fact job number one within a substantially, in our view, semi-autonomous agency."

Despite Filibuster and Veto Threat, Nuclear Program Needs Revamping

During Senate consideration of the FY 2000 Defense Authorization bill, Senators Kyl, Domenici, and Murkowski offered an amendment that is very similar to the recommendations outlined in the Rudman report. A Democrat filibuster and a veto threat by the Administration forced the sponsors to withdraw the amendment.

Despite Democrat rhetoric, there is an urgent need to completely revamp the current bureaucratic structure at the DOE. Such reform will enhance security and create accountability and responsibility at DOE, which oversees the U.S. nuclear weapons laboratories. To that end, Senators Kyl, Domenici, and Murkowski obtained a unanimous consent agreement to offer their amendment to the FY 2000 Intelligence Authorization bill (S. 1009, Rept. 106-48; H.R. 1555, Calendar No. 119), when it comes to the Senate floor.

What the Kyle-Domenici-Murkowski Amendment Does

The Kyl-Domenici-Murkowski amendment will restructure and reform how the Department of Energy's nuclear weapons activities are managed. These management reforms and reporting requirements will improve security and the operation of our nation's nuclear weapons facilities by addressing the systemic bureaucratic problems that have permeated the DOE for decades.

The amendment calls for the following changes.

Organizational Restructuring

- Establishes a separate organizational entity, the Agency for Nuclear Stewardship, with clear lines of authority, accountability and responsibility, and a clearly demarcated budget. This new organization is to be headed by an undersecretary of Energy, designated as the Administrator. The Administrator's job is to manage all nuclear weapons production, design, and test activities. This Administrator is directly accountable to the Secretary of Energy.
- Requires that the Directors of all 3 national laboratories and each nuclear weapons facility report to the Administrator.
- Codifies the existence of an Office of Counterintelligence in the DOE. The amendment states explicitly that the Director of Counterintelligence shall develop and implement programs to prevent the disclosure or loss of sensitive information.

Reporting Requirements

The new Administrator is required to:

- Fully inform the President and Congress about any threat to or loss of national security information; and

- Report to Congress every year regarding the adequacy of DOE's procedures and policies for protecting national security information, and whether each DOE laboratory is in full compliance with all DOE security requirements.

Each DOE laboratory Director is required to:

- Certify in writing whether that lab is in full compliance with all departmental national security information protection requirements.

In addition, the amendment:

- Prohibits anyone in DOE or anywhere else in the administration from interfering with reporting to Congress about any threat to or loss of national security information.
- Requires the Energy Secretary to identify that portion of the annual budget request sent to Congress that is intended for the new agency.

Why The Amendment is Needed: Mere Tinkering Falls Far Short

It is clear that the current management system within the Department of Energy is broken. Mere tinkering at the margins — like the policies being implemented currently by the Clinton Administration — fall far short of what is needed to address the critical national security problems experienced within our nuclear weapons complexes.

Failure of Current System Has Harmed National Security

The bipartisan House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China (the Cox/Dicks Report), documented the failure of U.S. counterintelligence to stop the Chinese government from acquiring sophisticated nuclear technology. Classified information on seven thermonuclear warheads, including every currently deployed thermonuclear warhead in the U.S. ballistic missile arsenal, was compromised, as well as a number of associated reentry vehicles. According to the Cox/Dicks Report, "the PRC's theft of nuclear secrets from our national weapons laboratories enabled the PRC to design, develop, and successfully test modern strategic nuclear weapons sooner than would otherwise have been possible" [p. ii].

New Administration Measures Fall Short of What's Needed

The Clinton Administration has been implementing a series of initiatives to redress the damage already done and to prevent further compromise of U.S. nuclear secrets. However, while applauding Secretary of Energy Bill Richardson's newest initiatives for reform, the Rudman Report states, "we seriously doubt that his initiatives will achieve lasting success. . . . Significant objectives, all of which were identified in the DOE OCI (Office of Counterintelligence) study completed nearly a year ago, have not yet been fully achieved. . . . *Moreover, the Richardson initiatives simply do not go far enough.*" [p. 39; emphasis added].

Series of Reports Highlight Need for Legislation

No less than 19 reports have been issued that criticize DOE's management of the U.S. nuclear weapons complex, highlight security concerns, and that call for radical reorganization of the Department of Energy. These include: 5 internal DOE reviews; 4 outside studies; 6 GAO reports; and 3 blue ribbon commissions. (Excerpts from some of these reports are found at the end of this paper.)

Perhaps the most telling admission is the Secretary of Energy's own *Management Review Report*, which in April of 1999 reports (and which Senator Kyl in his statement before the Intelligence Committee on June 9, 1999, reiterates) that:

"Significant problems exist [in DOE] in that roles and responsibilities are unclear; lines of authority and accountability are not well understood or followed; the distinction between headquarters line and staff functions is unclear, and each is operating with autonomy."

Preventing Recurrences

Perhaps most importantly, the Kyl-Domenici-Murkowski amendment is meant to ensure that what happened during the Clinton Administration will never be repeated again. Namely, that:

- A Deputy Secretary in late 1996, who had investigated clear indications of serious security and counterintelligence problems at DOE, drew up a list of initiatives which were ignored by DOE laboratory bureaucrats. Subsequent Secretaries of Energy were never even told about the plan;
- DOE labs did not have in place any mechanism other than spot checks to prevent the removal of classified material;
- Even though DOE's then-chief of intelligence was ringing alarm bells as early as 1995 about possible Chinese espionage, nobody in the senior management of DOE or elsewhere in the Administration seemed to be paying much attention;
- DOE did not tell the FBI that the primary suspect of Chinese espionage, Wen Ho Lee, had signed a privacy waiver which would have allowed DOE and the FBI to look at his computer;
- Senior DOE officials allowed Wen Ho Lee to continue to have access to nuclear weapons secrets long after he was the prime suspect of such espionage;
- A senior DOE official allegedly prevented Congress from being briefed because she thought the information would be used to criticize the President's China policy; and
- The President publicly denied he was ever briefed about the loss of these secrets, even though he was.

[These points are taken from the statement of Senator Murkowski at the Select Committee on Intelligence, 6/9/99.]

Republican Legislation Consistent with PFIAB's Recommendations

The amendment proposed by Senators Kyl, Domenici, and Murkowski is very similar to the recommendations offered by the President's own PFIAB, as they both focus on ensuring a direct line of responsibility and accountability. Specifically, the Rudman Report (PFIAB report) proposes two alternative approaches, each one predicated on the establishment of a new agency to address DOE's systemic problems. The report recommends that:

- *Either* the new agency remain an element of DOE but become semi-autonomous; this would be accomplished by having the agency director report only to the Secretary of Energy; *or*,
- that it be completely independent, with its administrator reporting directly to the President.

[PFIAB Report, p. 46]

Whichever approach is chosen, the report states that the agency must have staffing and support functions that are autonomous from the remaining operations at DOE. Further, to protect the agency's autonomy and avoid the diversion of funds to other purposes, the agency budget must be a separate line item strictly segregated by Congress from other budget pressures. Finally, the report insists that the new agency be established by statute [PFIAB Report, p. 46].

Now that the President's own advisory panel has recommended revamping the Department of Energy in ways that mirror the Kyl-Domenici-Murkowski proposals, it is time for the Senate to adopt these common-sense, bipartisan responses to counter what the Rudman Report calls, "the worst security record on secrecy [its members] have ever encountered."

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[See Appendix: Other Reports on the Need to Revamp the DOE.]

[Editor's note: For an analysis of the issue of Chinese espionage at U.S. nuclear facilities, see RPC papers, "China's Theft of U.S. Nuclear Secrets," 3/12/99; "The Clinton Administration and Chinese Espionage at U.S. Nuclear Weapons Labs: A Chronology of Key Events," 5/27/99; "House Select Committee Report Documents Serious Chinese Theft of U.S. Nuclear Secrets," 5/27/99; and "Nuclear Secrets and Civil Rights," 6/11/99.]

Other Reports on the Need to Revamp the DOE

In addition to the so-called Rudman Report (PFIAB), here are excerpts from other groups that have called for restructuring of the DOE's nuclear entities. The first three were provided to the Intelligence Committee by Senator Domenici in his statement of June 9, 1999.

The Chiles Commission, which reported earlier this year that:

"Reorganization of DOE is needed to eliminate excessive oversight and overlapping, unclear government roles. The Assistant Secretary for Defense Programs (ASDP) should be given direct line management authority over all aspects of the nuclear weapons complex, including corresponding elements of the DOE field structure."

Drell Commission (1990):

"We concur with the recommendation of the 1985 Clark Task Group to 'strengthen DOE's management attention to its national security responsibilities.' . . . These steps should include raising the stature of the nuclear weapons program management within DOE, for example by establishing a separate organizational entity, e.g., and Administration with a clearly demarcated budget, reporting directly to the DOE Secretary."

DOE Study, chaired by then-chairman of Motorola Corporation, Bob Galvin, which found that:

"There have been many studies in the Department of Energy laboratories. As one reads these reports, one recognizes that the items which were recommended in previous reports are, for the most part, recommended in most subsequent reports. As each past study has taken place, people of good intentions make sincere efforts to 'fine tune' the system. However, the Department and the Congress should recognize that there has been little fundamental improvement as a function of past studies. We suggest that the country try one or more concepts that are radically new. . . to achieve significant improvements."

The House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, (The Cox/Dicks Report) 5/25/99:

Even with all of the current efforts of the Secretary of Energy to date:

"Security at the national weapons laboratories will not be satisfactory until at least sometime in the year 2000." [p. xi]